

AMENDED IN SENATE JULY 2, 2003  
AMENDED IN ASSEMBLY MAY 13, 2003  
AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1497**

**Introduced by Assembly Member Montanez**

February 21, 2003

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~~An act to amend Section 44004 of, and to add Sections 21084.5 and~~  
*An act to amend Sections 44004 and 45011 of, and to add Section*  
43501.5 to, the Public Resources Code, relating to solid waste.

LEGISLATIVE COUNSEL'S DIGEST

AB 1497, as amended, Montanez. Solid waste facilities: permits.

(1) ~~The existing California Environmental Quality Act (CEQA) requires a lead agency, as defined, to prepare, or cause to be prepared, and certify the completion of, an environmental impact report (EIR) on a project that it proposes to carry out or approve that may have a significant effect on the environment, or to adopt a negative declaration if it finds that the project will not have that effect.~~

~~The existing California~~ Integrated Waste Management Act of 1989, which is administered by the California Integrated Waste Management Board, establishes an integrated solid waste management program. Existing law prohibits the operation of a solid waste facility without a solid waste facilities permit and requires the operator of a solid waste landfill to submit to the board and the enforcement agency a plan for the closure and postclosure maintenance of the solid waste landfill and evidence of financial ability to provide for those costs. Existing law

prohibits the operator of a solid waste facility from making any significant change in the design or operation of the solid waste facility not authorized by the existing permit, unless the change is approved by the enforcement agency, pursuant to a specified procedure.

~~This bill would provide that a significant change in the design or operation of a solid waste facility is a project that may have a significant effect on the environment for purposes of CEQA. The bill would make a statement of legislative intent that the approval of an environmental impact report or negative declaration for a project involving a significant change in the design or operation of a solid waste facility should not be approved unless the environmental impact report or negative declaration includes a review of environmental justice issues and considers cumulative impacts. The bill would make conforming changes in the solid waste permitting provisions.~~

~~The bill would additionally prohibit an operator of a solid waste facility from making a significant change unless the operator provides notice to residents and businesses located in the surrounding community.~~

~~The~~

*This bill would require a person applying for a solid waste facilities permit to include, in the closure and postclosure plan, provisions for the re-employment and retraining of that solid waste facility's contract employees, and provisions to ensure adequate resources for taking these actions.*

*The bill would require an enforcement agency to submit its proposed determination regarding whether a change to the solid waste facility will be approved to the board for comment, and to hold at least one public hearing on the proposed determination. The bill would also require the enforcement agency to submit an appeal of its determination to the board for comment, and to hold at least one public hearing on the appeal. The bill would require the enforcement agency to provide notice, as specified, of the hearing.*

*The bill would require the board to adopt regulations that define the term "significant change in the design or operation of the solid waste facility that is not authorized by the existing permit."*

The bill would impose a state-mandated local program by imposing new duties upon enforcement agencies with regard to solid waste facilities permits, thereby imposing a state-mandated local program.

(2) *Existing law authorizes an enforcement agency to issue an order establishing a time schedule for a solid waste facility to comply with*

*requirements relating to waste management when the enforcement agency determines that the facility is not meeting those requirements. Existing law authorizes the order to provide for an administrative civil penalty in an amount not to exceed \$5,000 per day of violation, and not to exceed a total of \$15,000 in any one calendar year, if compliance is not achieved in accordance with the time schedule. Existing law prohibits imposition of that penalty for the first 3 minor violations of the same requirement, as specified. Existing law requires the enforcement agency to take specified actions before issuing an order imposing a civil or administrative penalty, relating to notice, the circumstances of the violation, and alternatives to the penalty.*

*This bill would delete the cap on the total amount of the penalty in one calendar year, delete the prohibition on imposing the penalty for minor violations, and delete the requirement that the enforcement agency take specified actions before issuing the order imposing a civil or administrative penalty. The bill would broaden the circumstances under which the order imposing the penalty and imposition of penalty may be made.*

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1    ~~SECTION 1. Section 21084.5 is added to the Public~~  
2    ~~Resources Code, to read:~~  
3    ~~21084.5. (a) Notwithstanding Section 21084, a significant~~  
4    ~~change in the design or operation of a solid waste facility that is~~  
5    ~~subject to Section 44004 is a project that may have a significant~~  
6    ~~effect on the environment.~~  
7    ~~(b) It is the intent of the Legislature that no environmental~~  
8    ~~impact report or negative declaration should be approved for a~~  
9    ~~project involving a significant change in the design or operation~~  
10    ~~of a solid waste facility unless the environmental impact report or~~

1 ~~negative declaration includes a review of environmental justice~~  
2 ~~issues and considers cumulative impacts.~~

3 ~~(e) For purposes of this section “environmental justice” has~~  
4 ~~the same meaning as defined in subdivision (e) of Section~~  
5 ~~65040.12 of the Government Code.~~

6 ~~SEC. 2.—~~

7 *SECTION 1.* Section 43501.5 is added to the Public  
8 Resources Code, to read:

9 43501.5. In addition to the requirements of this article, a  
10 person applying for a solid waste facilities permit shall include, in  
11 the closure and postclosure plan, provisions for both of the  
12 following:

13 (a) Provisions for the re-employment and retraining of that  
14 solid waste facility’s contract employees, including, but not  
15 limited to, truck drivers and haulers.

16 (b) Provisions to ensure that the amounts that the owner or  
17 operator will deposit in the trust fund or equivalent financial  
18 arrangement acceptable to the board will ensure adequate  
19 resources for taking the actions specified in subdivision (a).

20 ~~SEC. 3.—~~

21 *SEC. 2.* Section 44004 of the Public Resources Code is  
22 amended to read:

23 44004. (a) An operator of a solid waste facility may not make  
24 a significant change in the design or operation of the solid waste  
25 facility that is not authorized by the existing permit, unless the  
26 change is approved by the enforcement agency, the change  
27 conforms with this division and all regulations adopted pursuant  
28 to this division, *and* the terms and conditions of the solid waste  
29 facilities permit are revised to reflect the change, ~~and the operator~~  
30 ~~has provided notice to the community as specified in paragraph (3)~~  
31 ~~of subdivision (e).~~

32 (b) If the operator wishes to change the design or operation of  
33 the solid waste facility in a manner that is not authorized by the  
34 existing permit, the operator shall file an application for revision  
35 of the existing solid waste facilities permit with the enforcement  
36 agency. The application shall be filed at least 150 days in advance  
37 of the date when the proposed modification is to take place unless  
38 the 150-day time period is waived by the enforcement agency.

39 (c) The enforcement agency shall review the application to  
40 determine all of the following:

1 (1) Whether the change conforms with this division and all  
2 regulations adopted pursuant to this division.

3 (2) Whether the ~~operator has complied with~~ *change requires*  
4 *review pursuant to* Division 13 (commencing with Section  
5 21000).

6 ~~(3) Whether the operator of the solid waste facility has~~  
7 ~~provided notice to residents and businesses located in the~~  
8 ~~surrounding community.~~

9 (d) Within 30 days from the date of the receipt of the  
10 application for a revised permit, the enforcement agency shall  
11 inform the operator, and if the enforcement agency is a local  
12 enforcement agency, also inform the board, of its determination to  
13 do any of the following:

14 (1) Allow the change without a revision to the permit.

15 (2) Disallow the change because it does not conform with the  
16 requirements of this division or the regulations adopted pursuant  
17 to this division.

18 (3) Require a revision of the solid waste facilities permit to  
19 allow the change.

20 (4) Require review under Division 13 (commencing with  
21 Section 21000) before a decision is made.

22 (e) The operator has 30 days within which to appeal the  
23 decision of the enforcement agency to the hearing panel, as  
24 authorized pursuant to Article 2 (commencing with Section ~~44500~~  
25 ~~44305~~) of Chapter 4.

26 (f) Under circumstances that present an immediate danger to  
27 the public health and safety or to the environment, as determined  
28 by the enforcement agency, the 150-day filing period may be  
29 waived.

30 (g) (1) A permit revision is not required for the temporary  
31 suspension of activities at a solid waste facility if the suspension  
32 meets either of the following criteria:

33 (A) The suspension is for the maintenance or minor  
34 modifications to a solid waste unit or to solid waste management  
35 equipment.

36 (B) The suspension is for temporarily ceasing the receipt of  
37 solid waste at a solid waste management facility and the owner or  
38 operator is in compliance with all other applicable terms and  
39 conditions of the solid waste facilities permit and minimum  
40 standards adopted by the board.

(2) An owner or operator of a solid waste facility who temporarily suspends operations shall remain subject to the closure and postclosure maintenance requirements of this division and to all other requirements imposed by federal law pertaining to the operation of a solid waste facility.

(3) The enforcement agency may impose any reasonable conditions relating to the maintenance of the solid waste facility, environmental monitoring, and periodic reporting during the period of temporary suspension. The board may also impose any reasonable conditions determined to be necessary to ensure compliance with applicable state standards.

*(h) (1) Before making a final determination pursuant to subdivision (d) or hearing an appeal pursuant subdivision (e), the enforcement agency shall submit the proposed determination or the appeal to the board for comment and hold at least one public hearing on the proposed determination or the appeal. The enforcement agency shall give notice of the hearing pursuant to Section 65091 of the Government Code, except that the notice shall be provided to all owners of real property within one mile, rather than 300 feet, of the real property that is the subject of the hearing. The enforcement agency shall also provide notice of the hearing to the board when it submits the proposed determination to the board.*

*(2) If the board comments pursuant to paragraph (1), the board shall specify whether the proposed determination is consistent with the regulation adopted pursuant to subdivision (i).*

*(i) (1) On or before January 1, 2005, the board shall adopt regulations that define the term "significant change in the design or operation of the solid waste facility that is not authorized by the existing permit."*

*(2) While formulating and adopting the regulations required pursuant to paragraph (1), the board shall consider recommendations of the Working Group on Environmental Justice made pursuant to Section 71113 and the report required pursuant to Section 71115.*

*SEC. 3. Section 45011 of the Public Resources Code is amended to read:*

~~45011. (a) (1) Except as provided in paragraph (2), if~~ *If an* enforcement agency determines that a solid waste facility *or disposal site,* is in violation of this division, any regulations

1 adopted pursuant to this division ~~applicable to a solid waste~~  
2 ~~facility, or any corrective action or cease and desist order, or any~~  
3 ~~other order issued under this division~~, or poses a potential or actual  
4 threat to public health and safety or the environment, the  
5 enforcement agency may issue an order establishing a time  
6 schedule according to which the facility *or site* shall be brought  
7 into compliance with this division. The order may also provide for  
8 a civil penalty, to be imposed administratively by the enforcement  
9 agency, in an amount not to exceed five thousand dollars (\$5,000)  
10 for each day on which a violation occurs, ~~and not to exceed a total~~  
11 ~~amount of fifteen thousand dollars (\$15,000) in any one calendar~~  
12 ~~year if compliance is not achieved in accordance with that time~~  
13 ~~schedule.~~

14 ~~(2) (A) Notwithstanding paragraph (1), an enforcement~~  
15 ~~agency shall not impose a civil penalty pursuant to this section for~~  
16 ~~the first three minor violations of the same requirement or standard~~  
17 ~~established under this division, or any regulations adopted~~  
18 ~~pursuant to this division applicable to a solid waste facility,~~  
19 ~~identified at a solid waste facility.~~

20 ~~(B) For purposes of this paragraph, a “minor violation” is a~~  
21 ~~violation that does not pose any threat to the public health, safety,~~  
22 ~~or to the environment, and which does not pertain to the actual~~  
23 ~~design or operation of a solid waste facility but only to a strictly~~  
24 ~~procedural aspect of the solid waste facilities permit.~~

25 ~~(b) Prior to issuing an order that imposes a civil penalty~~  
26 ~~pursuant to subdivision (a), an enforcement agency shall do both~~  
27 ~~of the following:~~

28 ~~(1) Notify the operator of the solid waste facility that the~~  
29 ~~facility is in violation of this division.~~

30 ~~(2) Upon the request of the operator of the solid waste facility,~~  
31 ~~meet with the operator of the solid waste facility to clarify~~  
32 ~~regulatory requirements and to determine what actions, if any, that~~  
33 ~~the operator may voluntarily take to bring the facility into~~  
34 ~~compliance by the earliest feasible date.~~

35 ~~(c) Prior to imposing any administrative civil penalty against~~  
36 ~~an operator of a solid waste facility, the enforcement agency shall~~  
37 ~~do all of the following:~~

38 ~~(1) Notify the governing body of its intent to impose a penalty.~~  
39 ~~Upon receipt of the notification, the governing body may direct the~~  
40 ~~hearing panel to hold a duly noticed public hearing to provide an~~

1 ~~opportunity for the alleged violation or violations and the amount~~  
2 ~~of any proposed civil penalty to be reviewed by the hearing panel~~  
3 ~~pursuant to Section 44308.~~

4 ~~(2) Consider the factors described in subdivision (a) of Section~~  
5 ~~45016.~~

6 ~~(3) Consider alternatives to the imposition of an administrative~~  
7 ~~civil penalty that would bring the solid waste facility into~~  
8 ~~compliance and would achieve the same result without imposing~~  
9 ~~the penalty.~~

10 SEC. 4. No reimbursement is required by this act pursuant to  
11 Section 6 of Article XIII B of the California Constitution because  
12 a local agency or school district has the authority to levy service  
13 charges, fees, or assessments sufficient to pay for the program or  
14 level of service mandated by this act, within the meaning of  
15 Section 17556 of the Government Code.

